

EXHIBIT G

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

HERMÈS INTERNATIONAL, et al.,

Plaintiffs,

v.

22 Civ. 384 (JSR)

MASON ROTHSCHILD,

Defendant.

New York, N.Y.
January 30, 2023
9:30 a.m.

Before:

HON. JED S. RAKOFF,

District Judge
-and a Jury-

APPEARANCES

BAKER & HOSTETLER LLP
Attorneys for Plaintiffs

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BY: RHETT O. MILLSAPS, II

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1 A. No, it cannot.

2 Q. What is the reference to Meta, m-e-t-a, that appears next
3 to MetaBirkins?

4 A. That is the symbol. It's not mandatory to have, but in
5 this case they have it here. You can almost think of it as a
6 stock ticker symbol. If I wanted to do a quick search on some
7 of the marketplaces, I could use the symbol instead of the full
8 name.

9 Q. Can you look at what has been marked as Exhibit 80.

10 Have you seen that before today?

11 A. Yes, I have.

12 Q. What is that?

13 A. That is an export out of the Etherscan.io site of all the
14 transactions related to the MetaBirkins smart contract.

15 Q. Is this information you relied on in forming opinions in
16 this case?

17 A. Yes, I did.

18 MR. FERGUSON: I offer Exhibit 80 into evidence.

19 MR. MILLSAPS: No objection.

20 THE COURT: Received.

21 (Plaintiff's Exhibit 80 received in evidence)

22 So let me ask you this, because I'm just a dumb judge,
23 so I'm not following everything and maybe the jury isn't
24 either.

25 The MetaBirkins, a MetaBirkins is an image; yes?

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1 THE WITNESS: Is a what?

2 THE COURT: Image.

3 THE WITNESS: MetaBirkins, no, is the name of the
4 smart contract.

5 THE COURT: It's the name of the smart contract.

6 So we saw earlier images of Birkin bags covered in
7 fur.

8 THE WITNESS: Um-hmm.

9 THE COURT: What do you call those?

10 THE WITNESS: That's the image file connected to the
11 MetaBirkins NFT.

12 THE COURT: OK. So the image file is something that
13 is offered for sale; yes?

14 THE WITNESS: That is the visual representation of
15 what is being offered for sale is the actual token, which to
16 all of us wouldn't really mean anything.

17 THE COURT: I think my question was a yes-or-no
18 question, but OK.

19 So if you go on the relevant website and you want to
20 purchase exclusive use of this image, that's what you
21 ultimately are getting for your money, right?

22 THE WITNESS: That is your expectation, yes.

23 THE COURT: I think the answer to that is yes, right?
24 Can you answer a question yes or no?

25 THE WITNESS: Yes, I can.

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1 THE COURT: So is the answer to my question yes?

2 THE WITNESS: No.

3 THE COURT: No.

4 Then what's the right answer?

5 THE WITNESS: At issue there is the image can actually
6 change in the future.

7 THE COURT: So you've heard of something called money;
8 yes?

9 THE WITNESS: Yes.

10 THE COURT: When a person exchanges money for certain
11 rights respecting a MetaBirkins image, what they are getting is
12 the exclusive right to have that image available and maybe to
13 the originator, true?

14 THE WITNESS: True.

15 THE COURT: Now we're making progress.

16 And if the person who then purchased that opportunity
17 wants to sell it, the originator then gets, pursuant to the
18 smart contract, a percentage of the sale, true?

19 THE WITNESS: Yes.

20 THE COURT: OK. Go ahead, counsel.

21 BY MR. FERGUSON:

22 Q. What is a minting contract in the context of a smart
23 contract -- in the context of an NFT?

24 I'm sorry. Let me start that again.

25 What is a minting transaction in the context of an

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1 A. One of the retails.

2 Q. And then looking at the green line that I've just added to
3 that chart, what does that green line represent?

4 A. That represents the timeline while the minting was going
5 on, so I could see when the minting started and ended. So I
6 could compare whether resales were occurring at the same time
7 the minting process was occurring.

8 Q. When the MetaBirkins NFTs were created, were they linked to
9 any digital file?

10 A. Not initially, no.

11 Q. At the time that the minting transactions began, were they
12 linked to a digital file?

13 A. Yes, they were.

14 Q. And what was the digital file they were linked to?

15 A. They were linked to a covered bag image that had some
16 animation that said future home of MetaBirkins.

17 Q. And how did you determine that?

18 A. One of the methods in the smart contract allows the
19 contract owner to set the repository, the point to the
20 repository for those images. So I found the transaction
21 related to that setting and navigated to that repository to
22 look at what the images were at that time.

23 Q. And can you show me, can you describe to me what is shown
24 in this slide?

25 A. The top line is the actual transaction that set the pointer

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1 series of transactions that were setting the base URI so this
2 would, prior to the fourth being minted, so this would have
3 been the last one which set a new repository navigating to that
4 new repository. This is the image that was there at the time,
5 this JPEG image.

6 Q. And is this image on the blockchain?

7 A. No, it's not.

8 Q. Who decides what image the NFT is going to point to?

9 A. That's controlled by the smart contract owner.

10 Q. So the individual purchasing the NFT doesn't have control
11 over how that pointer is going to function, is that correct?

12 A. That's correct.

13 Q. And could you look at Exhibit 83 in your folder.

14 Can you identify that?

15 A. That is the covered bag image that was set after the third
16 NFT was minted.

17 MR. FERGUSON: I offer Exhibit 83 into evidence.

18 MR. MILLSAPS: No objection.

19 THE COURT: Received.

20 (Plaintiff's Exhibit 83 received in evidence)

21 Counsel, find a spot in the next five minutes to break
22 for the day.

23 MR. FERGUSON: Five minutes to break?

24 THE COURT: Find a time in the next five minutes to
25 break for today.

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1 (Jury not present)

2 THE COURT: So let me show the witness page ten of his
3 expert report. And the title is "What is a MetaBirkins NFT?"
4 The sentence that follows says, "A MetaBirkins NFT is a is a --
5 "is a" is repeated twice, but it's obviously a typo -- is a
6 token on a Ethereum blockchain -- question whether it should be
7 an Ethereum blockchain or a, but, again, inconsequential -- is
8 a token on a Ethereum blockchain that represents ownership of a
9 unique item (a MetaBirkins NFT)."

10 So the unique item is a MetaBirkins NFT; yes?

11 THE WITNESS: Yes.

12 THE COURT: And you accompany that on your report with
13 figure one, sample MetaBirkins NFT, and it's the image, right?

14 THE WITNESS: Correct.

15 THE COURT: So while I understand that you want to
16 your question or want to make a distinction, it seems to me of
17 no consequence whatsoever between the computerized data
18 associated with the image and the image.

19 In your report you identify the image as a MetaBirkins
20 NFT; yes?

21 THE WITNESS: Yes, I do.

22 THE COURT: And you stand by that, do you not?

23 THE WITNESS: Yes.

24 THE COURT: All right. So I thought I asked you
25 whether that was a MetaBirkins NFT. Maybe I misphrased my

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1 question because I can't remember it now exactly.

2 But if I were to ask you tomorrow, are these images
3 what we mean by MetaBirkins NFTs, your answer would be yes?

4 THE WITNESS: That would be correct.

5 THE COURT: All right. You may step down.

6 (Witness temporarily excused)

7 Now I take the liberty of suggesting to plaintiff's
8 counsel that, so far articulated to the jury, this witness and
9 his testimony is being made to be far more confusing than
10 helpful. I intervened because I could see, just from looking
11 at their faces, that the jurors were confused. And I have to
12 say, I didn't think the responses I got from the witness
13 particularly helped.

14 Now in his report, just to take an example, he defines
15 these images as MetaBirkins NFTs. So a question could have
16 been put to him: What's a MetaBirkins NFT? Oh, it's this
17 image here on the screen. And every juror would have
18 understood that.

19 But that's not the way we proceeded. And looking at
20 his report, I notice that, for example, he spends many, many,
21 many pages describing how he computed how much money
22 Mr. Rothschild made over all this. So I was waiting for the
23 question, that I assume hopefully will come tomorrow: How much
24 money did Mr. Rothschild make off of the MetaBirkins NFT sales?

25 And then we would get an answer, and then you could